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8 UNITED STATES DISTRICT COURT
9 Northern District of California
10 Oakland Division

11 JOSE A. JARA, No. C 11-00419 LB
12 v. Plaintiff,
13 AURORA LOAN SERVICES, *et al.*, ORDER STRIKING PLAINTIFF'S
14 Defendants. [ECF Nos. 41, 42]
15 _____ /

16 On November 10, 2010, Plaintiff Jose Jara filed a complaint in San Mateo County Superior
17 Court alleging that Defendants violated various state and federal laws in connection with a
18 mortgage, a loan modification, and a trustee's sale of property located at 330 Arbor Drive, South
19 San Francisco. Complaint, ECF No. 1 at 6-36.¹ He then filed an amended complaint on November
20 23, 2010. First Amended Complaint (FAC), ECF No. 1 at 41-49. Defendants Aurora Loan Services
21 and Mortgage Electronic Registration Systems (MERS) removed the case to federal court on
22 January 28, 2011. Notice of Removal, ECF No. 1.

23 Defendants moved to dismiss Mr. Jara's first amended complaint on June 28, 2011. Motion to
24 Dismiss, ECF No. 33; Joinder (California Western Reconveyance), ECF No. 34. Mr. Jara did not
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28 ¹ Citations are to the Electronic Case File ("ECF") with pin cites to the electronic page
number at the top of the document, not the pages at the bottom.

1 file an opposition, which was due on July 12, 2011. Civ. L.R. 7-3.² On August 16, 2011, Mr. Jara
2 filed a “first amended complaint in federal court” (what really is his proposed second amended
3 complaint). ECF No. 41. Defendants moved to strike Mr. Jara’s “first amended complaint in federal
4 court” on August 23, 2011. Motion to Strike, ECF No. 42.

5 Mr. Jara apparently believed that he could file a “first amended complaint in federal court” as a
6 matter of course. However, when a case is removed to federal court, “the federal court . . . treats
7 everything that occurred in the state court as if it had taken place in federal court.” *See Carvalho v.*
8 *Equifax Info. Services, LLC*, 629 F.3d 876, 887 (9th Cir. 2010) (quoting *Butner v. Neustadter*, 324
9 F.2d 783, 785 (9th Cir. 1963)). Here, Mr. Jara filed a first amended complaint in state court on
10 November 23, 2010. FAC, ECF No. 1 at 41-49. Under Federal Rule of Civil Procedure 15(a)(1), a
11 plaintiff may amend his complaint *once* as a matter of course within 21 days of serving the original
12 complaint or, “if the pleading is one to which a responsive pleading is required, . . . 21 days after
13 service of a motion under Rule 12(b), (e), or (f).” A plaintiff may file subsequent amendments only
14 with the opposing party’s written consent or with the court’s permission. Fed. R. Civ. P. 15(a)(2);
15 *see also Howell v. City of Fresno*, No. CV-F-07-371 OWW/TAG, 2007 WL 1501844, at *2 (E.D.
16 Cal. May 23, 2007) (striking a second amended complaint where the plaintiff already filed an
17 amended complaint prior to removal and did not obtain the defendants’ permission or the court’s
18 leave to file a second amended complaint). Thus, Mr. Jara required either Defendants’ written
19 consent or the court’s permission before filing a second amended complaint because (1) he already
20 filed a first amended complaint as a matter of course and (2) he filed the second amended complaint
21 more than 21 days after Defendants filed their motion to dismiss. *Id.* Mr. Jara did not file a
22 stipulation demonstrating Defendants’ written consent to the second amended complaint and he did
23 not seek the court’s permission before filing it. Accordingly, the court orders the following:

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25 ² Under the Civil Local Rules that were in effect prior to June 2, 2011, Mr. Jara’s opposition
26 would have been due by August 11, 2011. *See* Civ. L.R. 7-3(a) (“Any opposition to a motion must
27 be served and filed not less than 21 days before the hearing date.”) (amended effective June 2,
28 2011). Mr. Jara filed the amended complaint on August 16, 2011. ECF No. 41. Thus, even if Mr.
Jara believed that the old Local Rules remained in effect, the deadline under those rules for Mr.
Jara’s opposition had passed five days before he filed his “first amended complaint in federal court.”

- 1 1. The court **GRANTS** Defendants' motion to strike Mr. Jara's "first amended complaint in
2 federal court."
- 3 2. By September 1, 2011, Mr. Jara shall file either the parties' stipulation to the filing of a
4 second amended complaint or a motion for leave to file a second amended complaint. Any
5 opposition to a motion for leave to amend is due by September 15, and the optional reply is
6 due by September 22. Alternatively, if Mr. Jara elects not to seek leave to file an amended
7 complaint, he shall file his opposition to the motions to dismiss by September 1, 2011 and
8 Defendants may file an optional reply by September 8, 2011.
- 9 3. The court vacates the hearing currently set for September 1, 2011 and resets the hearing for
10 October 6, 2011 at 11:00 a.m.
- 11 4. The court cautions Mr. Jara to comply with Civil Local Rule 7 for all future motions and
12 oppositions.

13 This disposes of ECF No. 42.

14 **IT IS SO ORDERED.**

15 Dated: August 24, 2011



16 LAUREL BEELER
17 United States Magistrate Judge

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